

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A
JUDGE, NO. 01-244**

CASE NO.: SC01-2670

MOTION TO REOPEN DISCOVERY AND FOR PROTECTIVE ORDER

COMES NOW THE HONORABLE CHARLES W. COPE, by and through undersigned counsel, and requests an order of this Court reopening discovery in this proceeding and granting a Protective Order regarding the Order of discovery, pursuant to *Federal Rule of Civil Procedure* 1.280(c) and as grounds therefore states:

1. This proceeding was initiated against the Respondent by the Investigative Panel of the JQC pursuant to Notice of Formal Charges filed December 6, 2001.

2. The Panel purported to find probable cause to charge the Respondent notwithstanding that no sworn testimony was taken from the principal witnesses upon whom the charges rest: a mother and 33 year old daughter residing in Maryland. Nor did the Investigative Panel even interview the daughter or conduct any investigation to determine the credibility of hearsay reports of those witnesses to California authorities.

3.

4. Special Counsel for the JQC, John Mills, Esquire, failed and refused to timely comply with a Rule 12(b) demand listing his witnesses, knowing that the testimony of the mother and daughter was necessary to establish the charges formally brought against the Respondent.

5. On December 11, 2001, Special Counsel filed with the Court requests for admissions which he caused to be served on the Respondent. These were filed with the intent and purpose that the press would have access to same and publish articles to subject the Respondent to shame and ridicule. Upon subsequent complaint by the Respondent regarding this conduct, Special Counsel asserted that the Rules of the Judicial Qualifications Commission require such requests be filed in the Court record. Indeed the rules provide that the only matters which shall be public in this proceeding are “proceedings” and “pleadings” (Rule 12, Rule 23). Requests to Admit are neither “proceedings” or “pleadings” as Special Counsel well knows.

6. The Respondent duly noticed and set the depositions of the two Maryland witnesses, in accordance with the *Maryland Rules of Procedure* pursuant to subpoenas duly issued by the Clerk of Court for Montgomery County, Maryland Circuit Court and served upon the witnesses on January 8 and January 10, 2002.

7. Prior to the scheduled depositions of the two witnesses, Special Counsel filed an Emergency Motion for Protective Order seeking to quash their depositions on the grounds that Respondent had agreed to permit his deposition to go forward first and the depositions of the State’s witnesses should not proceed but for the prior deposition of the Respondent. In his motion, Special Counsel asserted “importance” in the order of the depositions, further unarticulated. In support of his motion, Special Counsel filed with the Court the statement of California Deputy District Attorney Lisa Poll, similarly asserting that the Respondent had violated the asserted agreement with Special Counsel and further asserting prejudice to the State of California in the scheduled criminal trial of Respondent then scheduled for February 25, 2002.

8. The misdemeanor criminal charges against the Respondent arise out of the identical allegations of fact upon which the Investigative Panel found probable cause in this proceeding.

9. In further support of Special Counsel's motion, private attorneys in Maryland representing the two Maryland witnesses, falsely represented to the Court that their clients had not been properly served in compliance with the Maryland rules; and further falsely alleged breach by Respondent of a non-existent agreement in their refusal to permit their clients to be deposed absent the prior deposition of Respondent.

10. The Respondent through his counsel filed his opposition to the JQC's motion on Monday, January 21, 2002. Prior to that filing, a telephonic hearing occurred on Friday, January 18, 2002. In attendance at that hearing by telephone were Respondent's counsel, John Mills for the JQC, Lisa Poll, from the District Attorney's Office in California, and counsel for the two Maryland witnesses. In the unforeseen absence of a Court reporter, the chair rescheduled the hearing for Tuesday, January 22, 2002; and in the interim ordered that the deposition of the witness in Maryland, then noticed for January 22, 2002, be abated. Prior to adjourning the initial hearing, counsel for one of the Maryland witnesses (the daughter) accused Judge Cope of "shenanigans" in purportedly deliberately evading his deposition in a pretextual hospitalization. Special Counsel earlier advised Louis Kwall he had received information that Judge Cope had admitted himself in and out of Morton Plant Hospital on the same day of the deposition.¹

11. In further support of his Motion to Quash, Special Counsel, John Mills, submitted an affidavit under oath to the Court in which he asserted, *inter alia*; 1) that he had advised the Maryland witnesses of both of Respondent's lawyers' supposed "promises" to "terrorize" them at their depositions; 2) that he advised them to secure private counsel to represent the witnesses in the depositions; 3) that he advised that certain questions which

¹ The asserted information was baseless.

Respondent's counsel intended to pursue at such depositions were improper, abusive and invasive of the privacy rights of the witnesses.

12. During the course of the telephonic hearing on January 22, 2002, Special Counsel, John Mills, announced that the previously disputed order of depositions was of no concern to him. Miss Poll also announced to the Court that the District Attorney in California agreed to continue the criminal trial of Respondent to permit discovery in the instant proceeding to go forward.

13. Notwithstanding that neither side requested a stay of discovery, this Court *sua sponte* entered an order staying all discovery until the California trial was completed, without prejudice to the parties' right to negotiate the taking of discovery prior to such trial.

14. Pursuant to the Court's order, Respondent offered to enter into negotiations with Special Counsel in an effort to resume appropriate discovery pursuant to Respondent's absolute due process right to take such discovery.

15. The negotiations to resume discovery centered about the Respondent's principle concern that information provided to Special Counsel in deposition concerning this and other evidentiary matters, not be provided to the witnesses in advance of their depositions, for fear that they would endeavor to adjust their testimony to thwart discovery of their falsehoods. An additional concern of the Respondent is that the witnesses have already, and will continue to resist the taking of their depositions and/or refuse to answer relevant questions. Notwithstanding his announcement to the Court that the order of deposition was of no concern to the JQC, Mr. Mills continued to insist that Respondent be deposed first.

16. Such negotiations have proven fruitless.

17. The Respondent throughout such negotiations has advised Mr. Mills of his desire to bring critical evidence to his attention together with other evidence which would establish beyond peradventure that the allegations by the two Maryland witnesses are false. However, given the fact that Respondent is being prosecuted in two forums by authorities

who, in each forum, have shown little or no regard to the issue of the credibility of the allegations, Respondent is fearful that disclosure of that information to Special Counsel in the circumstances and thence to the California prosecutors or the witnesses and their counsel in Maryland, will result in further evasion and fabrication by the witnesses.² Accordingly, Respondent sought and secured the agreement of the prosecutor in California to continue his criminal trial until May 20, 2002 for the specific purpose of permitting this proceeding to proceed and be concluded. Copies of that agreement executed by the Respondent and Lisa Poll are attached hereto as Exhibit 1.

18. Securing the attendance of the Maryland witnesses requires the submission of process to the JQC for certification, transmittal of same to the Clerk of Court in Maryland for issuance of appropriate subpoenas, service upon the witnesses with ten days notice of the date of their depositions. The Maryland witnesses have already announced to this Court through their counsel their intentions to resist the taking of their depositions unless the Respondent is deposed first.

19. The Maryland witnesses have no standing or legal right to dictate the order of depositions. Furthermore, it is reasonably anticipated on this record that even if Respondent were deposed first, they would continue to resist the taking of their depositions and/or refuse to answer material questions. Were that to occur, Respondent would be gravely damaged both in this proceeding and in the California proceeding. Conversely, no harm whatsoever or prejudice accrues to this proceeding or to the California proceeding (as evidenced by the signed stipulation of the California prosecutor attached hereto) for the

² On December 13, Mr. Mills advised counsel for the Respondent that he had drafted the charges in this case with the possibility in mind that the daughter was lying. Hence, no battery charge was filed. Thereafter, on December 20, 2001, Mr. Mills admitted no representative of the JQC had ever spoken to the daughter. He explained that she could not be located and the California prosecutor refused to disclose her whereabouts. The undersigned advised Mr. Mills he did not believe such representation, and further advised he knew the witnesses' address in Maryland, (which he offered to provide) and intended to schedule her deposition even though she had not been listed as a witness. Miraculously, within one day Mr. Mills was able to locate the witness, determined she was "very credible" through one brief telephone conversation, and presumably told her to hire a lawyer to resist her deposition.

Maryland witnesses to be deposed first. Moreover, in the event the Maryland witnesses refuse to be deposed or answer material questions, Respondent would be entitled to dismissal of the charges formally brought against him by the JQC which rest entirely on their evidence.³

20. It is quite apparent that Special Counsel is well aware that his principal witnesses have made wildly inconsistent and impossible claims. This is true despite his assertion on January 16, 2002, to the undersigned that he had “read the police reports a thousand times” and found “no inconsistencies.” One example will suffice: on April 5, 2001, at 9:30 a.m., the daughter in Maryland claimed for the first time that Judge Cope “made several forceful sexual advances toward her, touching her breasts, holding her face, kissing her on the lips and inserting his tongue in her mouth.” Notwithstanding, on June 15, 2001, the same witness essentially recanted her initial allegation. She stated “I remember him just cupping my face with both his hands and just motioning to me to kiss me and I know I turned away. . . he wasn’t very forceful . . . he was very persistent. And I was persistent in turning my head from him . . . he never grabbed at my breasts but he kind of brushed my breasts . . . as he moved his hand off my face and kind of went down and brushed my breasts . . . and I remember saying ‘I don’t understand why you are trying to kiss me’.”

21. The above statements are not only dramatically and impossibly inconsistent they are both false. Significantly, the California prosecutor elected to file the battery charge against Judge Cope upon the strength of the June 15th statement. Special Counsel, in his announced zeal to convict Judge Cope has turned a blind eye to this and other demonstrated indicia of untruthfulness in the reports.

22. The Respondent remains anxious to cooperate with the Hearing Panel and to present all evidence to the Hearing Panel for an appropriate disposition of this case.

³ Respondent is in possession of evidence which establishes that the witnesses have in fact made false statements to, and/or withheld material information from California authorities. Since this evidence establishes violation of the current laws of California, when confronted with same, the witnesses may invoke their Fifth Amendment privilege against self incrimination.

23. The following facts have been established conclusively in support of the request for relief herein:

- a) California prosecution has been deferred for the express purpose of permitting this proceeding to move forward to conclusion without restriction or limitation;
- b) Special Counsel has announced to this Court that the sequence of depositions is of no concern to him or the JQC;
- c) Special Counsel has admitted instigating efforts which will likely result in the two principal witnesses refusal to answer relevant pertinent questions at any deposition;

- d) Respondent is in possession of information which, if shared with the Maryland witnesses prior to their deposition he reasonably fears would be utilized to shade or adjust their testimony or result in their refusal to testify;
- e) No prejudice has been advanced or can be claimed by the JQC in permitting Respondent to take the depositions of the Maryland witnesses prior to his deposition.
- f) Extreme prejudice would result to Respondent in the event his deposition is taken first, which prejudice is reasonably foreseen in the circumstances.

25. Respondent respectfully asserts that the above facts constitute good cause shown for the relief requested. Conversely, no prejudice has been or can be claimed by the JQC in opposition to the relief requested herein.

26. Respondent requests a hearing on this motion.

WHEREFORE, it is respectfully requested that this Court enter an order vacating its prior order, directing the parties to resume appropriate discovery and further ordering that the witnesses in Maryland be deposed prior to any deposition by the Respondent.

Respectfully submitted,

ROBERT W. MERKLE, ESQ.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Laudner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, **Louis Kwall, Esq.**, Co-Counsel for Respondent, 133 North Ft. Harrison Avenue, Clearwater, Florida 33755; this 1st day of February, 2002.

ROBERT W. MERKLE, ESQ.